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R.P., Appellant)	
)	
and)	Docket No. 12-802
)	Issued: December 14, 2012
U.S. POSTAL SERVICE, POST OFFICE,)	
Edison, NJ, Employer)	
)	

Thomas R. Uliase, Esq., for the appellant
Office of Solicitor, for the Director

PATRICIA HOWARD FITZGERALD, Judge
MICHAEL E. GROOM, Alternate Judge
JAMES A. HAYNES, Alternate Judge

¹ 5 U.S.C. § 8101 *et seq.*

FACTUAL HISTORY

On November 26, 2001 appellant, then a 43-year-old letter carrier, was lifting tubs of flats and injured his low back. OWCP accepted the claim for a lumbar strain. Appellant missed intermittent days and returned to a light-duty position. He received wage-loss compensation.

Appellant came under treatment of Dr. Mingi Choi, a Board-certified orthopedic surgeon, for degenerative disc disease from March 19, 2003 to November 29, 2005. Dr. Choi diagnosed degenerative disc disease of the lumbar spine with radiculitis and recommended physical therapy and an epidural injection. He returned appellant to work full time with restrictions. In reports dated October 26, 2007 to February 11, 2010, Dr. Choi noted appellant's treatment for multilevel degenerative disc disease of the lumbar spine. He administered several epidural injections with success. Dr. Choi noted that appellant could work part time with restrictions. A magnetic resonance imaging (MRI) scan of the lumbar spine revealed disc bulges at L2-L3, L3-L4, L4-L5 and L5-S1 with mild canal and foraminal encroachment.²

On March 10, 2010 OWCP referred appellant to Dr. Andrew M. Hutter, a Board-certified orthopedic, for a second opinion. In a March 25, 2010 report, Dr. Hutter noted that examination revealed tenderness to palpation of the lumbar paraspinal musculature, no palpable spasm, limited range of motion, negative straight leg raising bilaterally, normal motor testing, symmetrical reflexes and intact sensory examination in both lower extremities. He diagnosed degenerative disc disease of the lumbar spine. Dr. Hutter opined that appellant's lumbar strain had resolved and his symptoms were related to underlying degenerative disc disease. He advised that appellant could work eight hours a day and that the restrictions were due to the progression of degenerative disc disease. Dr. Hutter noted that if appellant did not have preexisting degenerative disc disease, he would have expected the lumbar strain to have resolved. He noted that appellant was at maximum medical improvement. In a work capacity evaluation dated March 25, 2010, Dr. Hutter noted that appellant could return to work full time with restrictions related to his nonwork-related degenerative disc disease.

In reports dated March 5 to September 3, 2010, Dr. Choi noted that appellant had L4-L5 epidural injections with moderate symptom improvement. In a September 3, 2010 duty status report, he diagnosed lumbar degenerative disc disease and radiculitis and noted that appellant could work four hours a day with restrictions.

OWCP found a conflict of medical opinion between Dr. Hutter, who opined that appellant's work-related lumbar strain was resolved and that he could return to work full time with restrictions relating to the preexisting lumbar degenerative disc disease and Dr. Choi, who opined that appellant had residuals of his lumbar strain and could work only part time with restrictions.

On November 22, 2010 OWCP referred appellant to Dr. Edward B. Krisiloff, a Board-certified orthopedic surgeon, selected as the impartial medical specialist. In a December 20, 2010 report, Dr. Krisiloff reviewed the record and examined appellant. He diagnosed a resolved

² Appellant submitted claims for recurrence of disability on March 19 and July 11, 2003, October 18, 2004, January 28, 2006 and March 8 and May 2, 2008, which were accepted by OWCP.

lumbar strain and exacerbation of underlying degenerative lumbar disc disease. Dr. Krisiloff noted findings on examination of stiffness in the low back that impaired spinal range of motion, no muscle spasm, normal gait, no motor or sensory loss of the lower extremity and negative straight leg raising. He found that appellant recovered from his lumbar strain soon after his original injury and the pattern of difficulty experienced was due to the underlying degenerative lumbar disc disease. Dr. Krisiloff opined that the injury led to a permanent exacerbation of his condition. He noted that there were no objective findings on physical examination that show appellant had an aggravation of a preexisting condition, rather radiographic findings including MRI scans over the years reveal underlying degenerative disc disease of the lumbar spine. Dr. Krisiloff noted no neurological weakness but limitation on range of motion of the low back which was due to the underlying degenerative disc disease. He advised that appellant would continue to need intermittent treatment for his low back condition. Dr. Krisiloff found that appellant could work full time with restrictions. In a work capacity evaluation, he advised that appellant could return to work full time with restrictions on sitting, twisting and bending/stooping limited to eight hours a day and lifting limited to 15 pounds, eight hours per day.

Appellant submitted a December 23, 2010 lumbar spine MRI scan that revealed disc herniations at all levels from L2-L3 to L5-S1 and foraminal stenosis. In reports dated January 11 to March 16, 2011, Dr. Choi diagnosed lumbar discogenic pain, lumbar degenerative disc disease with acute exacerbations. He diagnosed degenerative disc disease of the lumbar spine and recommended continued conservative treatment. In a duty status report dated March 16, 2011, Dr. Choi noted that appellant could return to work full time with restrictions.

On March 14, 2011 the employing establishment offered appellant a full-time modified city carrier position, with a tour of duty from 7:30 a.m. to 4:00 p.m. effective March 14, 2011. The duties consisted of casing mail for four hours, delivering mail, including walking, driving and deliveries for seven hours per day and express mail for an hour per day. The physical requirements included picking up a letter and reaching above the shoulder level up to four hours per day, standing while casing mail up to four hours per day and operating a motor vehicle and walking up to six hours per day. The duties were subject to the restrictions provided by Dr. Krisiloff of carrying and lifting limited to 15 pounds, no constant bending and stooping and working up to eight hours a day.

Appellant rejected the position contending that he was unable to do the job because it was too physical.

In statements dated March 16, 2011, appellant noted that he was willing to work and would accept the job offer under protest until the permanent restrictions provided by his physician were honored. He was unable to perform the job description of a carrier that included activities such as carrying mailbags, excessive bending and walking considering his medical and physical limitations. On March 30, 2011 appellant accepted the March 14, 2011 job offer under protest noting his medical and physical limitations did not permit him to perform the job. He reported to work on March 15, 2011 and worked five hours before the employing establishment advised that he was no longer needed and could not accept the job offer under protest. Appellant asserted that the job offer did not conform to the restrictions provided by Dr. Choi, Dr. Hutter or Dr. Krisiloff.

Appellant submitted claims for compensation for total disability for the period March 14 to 25 and March 26 to April 8, 2011, asserting that he used leave without pay because there was no work available. In CA-7a, time analysis forms, appellant's postmaster noted that work was available within his restrictions.

On April 4, 2011 appellant filed a Form CA-2a, notice of recurrence of disability, alleging that on March 14, 2011 the employing establishment sent him home after he refused a job offer that violated his medical restrictions. He stopped work on March 14, 2011 at 11:00 a.m. On the CA-2a the employing establishment advised that appellant was assigned duties within his restrictions and he refused the job offer. The employing establishment further noted that appellant reported for work on March 14, 2011 at 7:30 a.m. and clocked out at 10:00 a.m. Appellant submitted an electromyogram (EMG) dated April 12, 2011 which revealed no abnormalities.

On May 6, 2011 OWCP advised appellant of the factual and medical evidence needed to establish a recurrence claim.

In a statement, appellant noted that he filed a recurrence claim because he could not perform the duties of the offered job, which violated the restrictions provided by Dr. Choi. In an April 7, 2011 report, Dr. Choi stated that he could work in a sedentary position with limited lifting and bending including no lifting objects over five pounds on a repetitive basis.

In a decision dated July 6, 2011, OWCP denied appellant's claim for a recurrence of disability on March 14, 2011.

On July 12, 2011 appellant requested an oral hearing which was held on August 29, 2011. He submitted reports from Dr. Choi dated February 11 to August 30, 2011, who continued to treat appellant for lumbar degenerative disc disease. On August 22, 2011 Dr. Choi noted that appellant was status post lumbar epidural injections with a significant reduction of pain. He noted that appellant was on restricted duty due to the findings on the MRI scan and his level of discomfort. Dr. Choi noted reviewing an offer of modified assignment and advised that he did not think appellant could operate a motor vehicle, walk and stand to deliver mail for a prolonged period of time.

In a decision dated November 23, 2011, an OWCP hearing representative affirmed the decision dated July 6, 2011.

LEGAL PRECEDENT

When an employee, who is disabled from the job he held when injured on account of employment-related residuals, returns to a light-duty position or the medical evidence of record establishes that he can perform the light-duty position, the employee has the burden to establish by the weight of the reliable, probative and substantial evidence a recurrence of total disability and show that he cannot perform such light duty. As part of this burden, the employee must

show a change in the nature and extent of the injury-related condition or a change in the nature and extent of the light-duty requirements.³

OWCP regulations define the term recurrence of disability as follows: “Recurrence of disability means an inability to work after an employee has returned to work, caused by a spontaneous change in a medical condition, which had resulted from a previous injury or illness without an intervening injury or new exposure to the work environment that caused the illness. This term also means an inability to work that takes place when a light-duty assignment made specifically to accommodate an employee’s physical limitations due to his or her work-related injury or illness is withdrawn or when the physical requirements of such an assignment are altered so that they exceed his or her established physical limitations.”⁴

Causal relationship is a medical issue,⁵ and the medical evidence required to establish a causal relationship is rationalized medical evidence. Rationalized medical evidence is medical evidence which includes a physician’s rationalized medical opinion on the issue of whether there is a causal relationship between the claimant’s diagnosed condition and the implicated employment factors. The opinion of the physician must be based on a complete factual and medical background of the claimant, must be one of reasonable medical certainty and must be supported by medical rationale explaining the nature of the relationship between the diagnosed condition and the specific employment factors identified by the claimant.⁶

ANALYSIS

OWCP accepted appellant’s claim for lumbar strain. Appellant returned to a full-time light-duty position. He stopped work on March 14, 2011 after refusing a job offer because it was too physical. Appellant has not submitted sufficient evidence to support a change in the nature and extent of the injury-related condition or a change in the nature and extent of the light-duty requirements.

OWCP found that there was a conflict of opinion. Dr. Hutter, a Board-certified orthopedic surgeon, found that appellant’s work-related lumbar strain was resolved and that he could return to work full time with restrictions relating to his preexisting lumbar degenerative disc disease. Appellant’s physician, Dr. Choi, opined that appellant had residuals of his lumbar strain and could return to work part time with restrictions. Consequently, OWCP referred appellant to Dr. Krisiloff to resolve the conflict.

The Board finds that, under the circumstances of this case, the opinion of Dr. Krisiloff is sufficiently well rationalized and based upon a proper factual background such that it is entitled to special weight with respect to his ability to work full time with restrictions. Where there exists a conflict of medical opinion and the case is referred to an impartial specialist for the

³ *Terry R. Hedman*, 38 ECAB 222 (1986).

⁴ 20 C.F.R. § 10.5(x); *J.F.*, 58 ECAB 124 (2006); *Elaine Sneed*, 56 ECAB 373, 379 (2005); 20 C.F.R. § 10.5(x).

⁵ *Mary J. Briggs*, 37 ECAB 578 (1986).

⁶ *Gary L. Fowler*, 45 ECAB 365 (1994); *Victor J. Woodhams*, 41 ECAB 345 (1989).

purpose of resolving the conflict, the opinion of such specialist, if sufficiently well rationalized and based upon a proper factual background, is entitled to special weight.⁷

Dr. Krisiloff reviewed appellant's history, reported findings and diagnosed lumbar strain, resolved and exacerbation of underlying degenerative lumbar disc disease. He opined that, while appellant recovered from his lumbar strain soon after his original injury, the strain exacerbated appellant's degenerative lumbar disc disease. Dr. Krisiloff noted that appellant would continue to need intermittent treatment for his lower back condition. He noted that appellant could work full time with restrictions. In a work capacity evaluation, Dr. Krisiloff advised that appellant could return to work full time with restrictions on sitting, twisting and bending/stooping limited to eight hours a day and lifting limited to 15 pounds, eight hours daily.

The Board finds that Dr. Krisiloff's December 20, 2010 opinion is based upon an accurate factual background and is sufficiently well rationalized to establish appellant's work restrictions. He examined appellant and reviewed the medical records.

The employing establishment offered appellant a modified position that was consistent with Dr. Krisiloff's work restrictions which appellant refused to perform asserting before OWCP and on appeal that the duties were outside of his work restrictions. He submitted numerous medical reports from Dr. Choi. However, none of Dr. Choi's reports, most contemporaneous with the claimed recurrence of disability, noted the date of the claimed recurrence of disability, nor did he note a particular change in the nature of appellant's physical condition, arising from the employment injury, which prevented appellant from performing his specific light-duty position that the employing establishment made available.⁸

Appellant submitted an April 7, 2011 report from Dr. Choi who opined that as a result of appellant's MRI scan findings and discomfort appellant could perform a sedentary position with limited lifting and bending and could not carry letters or lift objects over five pounds on a repetitive basis. Similarly, on August 30, 2011 Dr. Choi diagnosed multilevel degenerative disc disease of the lumbar spine and noted that appellant was on restricted duty due to the findings on the MRI scan and his level of discomfort. He reviewed a modified job offer and opined that he did not think appellant could operate a motor vehicle, walk to deliver mail or engage in repetitive duties for a prolonged period of time. However, Dr. Choi's reports are insufficient to establish appellant's claim, as Dr. Choi did not provide a rationalized opinion explaining the reasons why appellant's recurrent condition and disability were due to the accepted injury.⁹ He did not explain the reasons why appellant's work condition precluded performing particular activities. To the extent that Dr. Choi was disagreeing with the work restrictions provided by Dr. Krisiloff, the Board has held that reports from a physician who was on one side of a medical conflict that an impartial specialist resolved, are generally insufficient to overcome the weight accorded to the

⁷ *Aubrey Belnavis*, 37 ECAB 206 (1985).

⁸ See *Katherine A. Williamson*, 33 ECAB 1696 (1982); *Arthur N. Meyers*, 23 ECAB 111 (1971) (where the Board has consistently held that contemporaneous evidence is entitled to greater probative value than later evidence).

⁹ See *George Randolph Taylor*, 6 ECAB 986, 988 (1954) (where the Board found that a medical opinion not fortified by medical rationale is of little probative value).

report of the impartial medical examiner or to create a new conflict.¹⁰ Dr. Choi's reports were either similar to his previous report regarding appellant's disability status or conclusory regarding appellant's disability status as he did not provide a rationalized opinion explaining the reasons why appellant's accepted condition precluded him from performing the work that was made available to him beginning March 14, 2011.

On appeal, appellant's counsel asserts that appellant's light-duty job requirements changed. The Board finds that, while the employing establishment offered a different job beginning March 14, 2011, there is no credible evidence which substantiates that appellant was required to perform duties which exceeded Dr. Krisiloff's medical restrictions. Dr. Krisiloff found that appellant could work full time with limitations on lifting 15 pounds, sitting, twisting and bending/stooping. The job offer of March 14, 2011 was in compliance with the restrictions set by Dr. Krisiloff. Appellant provided assertions that the job exceeded work restrictions but did not submit any evidence to support this assertion. The record does not establish that the job made available to appellant by the employing establishment exceeded the restrictions provided by Dr. Krisiloff.

Appellant has not met his burden of proof in establishing that there was a change in the nature or extent of the injury-related condition or a change in the nature and extent of the light-duty requirements which would prohibit him from performing the light-duty position he assumed after he returned to work.

CONCLUSION

The Board finds that appellant has not met his burden of proof in establishing that he sustained a recurrence of disability on or after March 14, 2011 causally related to his accepted condition.

¹⁰ *I.J.*, 59 ECAB 408 (2008).

ORDER

IT IS HEREBY ORDERED THAT the November 23, 2011 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: December 14, 2012
Washington, DC

Patricia Howard Fitzgerald, Judge
Employees' Compensation Appeals Board

Michael E. Groom, Alternate Judge
Employees' Compensation Appeals Board

James A. Haynes, Alternate Judge
Employees' Compensation Appeals Board